



MONTGOMERY COUNTY ETHICS COMMISSION

Kenita V. Barrow

Chair

February 19, 2016

Advisory Opinion 16-01-001

On January 12, 2016, the Ethics Commission received your request for a waiver in connection with an application you submitted for outside employment with the Lourie Center, an entity that contracts with the Department of Health and Human Services (DHHS). Section 19A-12(b)(1) of the County's Public Ethics Law prohibits an employee from engaging in outside employment with an entity that contracts with the employee's agency unless the employee obtains a waiver from the Ethics Commission pursuant to 19A-8(b). You requested a waiver from the Ethics Commission on the basis that there is no actual conflict. For the reasons stated below, the Ethics Commission denies your request for a waiver and denies your request for outside employment.

You are a School/Community Health Nurse in the DHHS School Health Services. Among other things, you work in early intervention programs, including the Montgomery County Infants and Toddlers' Program (MCITP) and Developmental Services for Children which are interagency programs with Montgomery County Public Schools.

You are a member of the MCPS team which includes occupational, physical, and speech therapists, and special educators. The team provides assessments to determine eligibility for MCITP and ongoing services. Among other things, you work directly with children and their families, in their homes, providing service coordination, ongoing developmental assessments, parent education on early childhood health and development issues, and parent support. You also write health articles for the MCITP parent newsletter and give presentations and lead discussions with parents on topics related to children's health and parenting. You are not a manager and do not provide clinical supervision to employees in your position in DHHS.

You request outside employment approval to be a contractor for the Lourie Center as a clinical nurse supervisor (consultant). The Lourie Center needs assistance from an experienced early childhood community health nurse to provide clinical guidance for some of their health care components. This position requires meeting for one hour per month, and sometimes more frequently, with 2 health care professionals working in MCITP who are employed by the Lourie Center. The Lourie contractor position provides guidance to the Lourie Center employees on early childhood health issues and professional development. The position does not manage Lourie Center employees and does not involve hiring or ongoing employment of Lourie Center staff.

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The nature of the position at the Lourie Center is different from your work for the County; your work with the County involves direct provision of services to clients, while the position at the Lourie Center focuses on the provision of guidance to other health care professionals.

Your submission indicates that the Lourie Center has several contracts with DHHS for, among other things, services related to Juvenile Court related mental health; child welfare clients that are referred by the County; the Therapeutic Nursery Program; audiovisual equipment for classrooms and therapy rooms; mental health, social work, and psychological testing; the parenting intervention program; and bilingual family services.

In consideration of your application for a waiver, a Nurse Administrator, School Health Services (DHHS), states that you have had some professional interactions with the Lourie Center staff nurses in team meetings in your official capacity and will continue to have this relationship in the future. She also indicated that based on the information you provided, you would not have any responsibilities with the Lourie Center that would interfere with your County duties. She indicated that you do not have the positional power within the County government to influence fiscal, contractual or business decisions.

The Director of the DHHS concurred in and supported the request for a waiver and recommended to the Ethics Commission that it approve the waiver.

The Ethics Commission denies the request for a waiver and the request for outside employment approval due to the Commission's conclusion that the work you would be doing at the outside employer is related to the contract between the DHHS and the outside employer. In particular, your outside employment involves counseling persons who are operating under a contract with DHHS to provide services for the MCITP.

The Commission understands that you are not in a County position that materially impacts the contract between DHHS and the outside employer. Nonetheless, the County ethics law provision at issue specifically prohibits outside employment with a business that contracts with an employee's agency. The reason for this prohibition is not just the risk of an employee taking action in their official capacity that would affect an outside employer. In fact, that risk is covered by a separate conflict of interest provision in the ethics law (19A-11(a)(1)). The prohibition found in 19A-12(b) is also intended to keep others in an agency from taking action or appearing to take action that could create employment opportunities for colleagues in their agency; the negative appearance to the public of employees profiting privately from agency action is one of the harms the statutory provision is intended to address. Where, as here, there is a direct relationship between the DHHS's contract with an outside employer and the outside employment activity of a DHHS employee, the Commission believes the prohibition should not be waived. The Commission notes that in your official capacity you have had some professional interaction with the Lourie Center staff nurses in meetings. This interaction only reinforces the Commission decision due to the proximity of your official job responsibilities to the outside employment activity.

If you have any questions, please contact Ethic Commission staff at 240-777-6674.

For the Commission:



Kenita V. Barrow, Chair